No. 99-474

In the Supreme Court of the United States

ANDREW S. NATSIOS, SECRETARY OF ADMINISTRATION AND FINANCE OF THE COMMONWEALTH OF MASSACHUSETTS, AND PHILMORE ANDERSON, III, STATE PURCHASING AGENT,

Petitioners,

v.

NATIONAL FOREIGN TRADE COUNCIL,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF FOR GERALD R. FORD, LEE H. HAMILTON, CARLA A. HILLS, AND CERTAIN OTHER FORMER U.S. GOVERNMENT OFFICIALS AS AMICI CURIAE SUPPORTING RESPONDENT

(Complete List of Amici Appears on the Inside Cover)

ANDREW N. VOLLMER
CAROL J. BANTA
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
202-663-6000

MARTIN S. KAUFMAN
Counsel of Record
EDWIN L. LEWIS, III
ATLANTIC LEGAL FOUNDATION
205 East 42d Street
New York, New York 10017
212-573-1960

Counsel for Amici Curiae

February 2000

BEST AVAILABLE COPY

Complete list of amici curiae:

James A. Baker, III
Griffin B. Bell
Nicholas F. Brady
William E. Brock
Frank C. Carlucci
Richard B. Cheney
Frederick B. Dent
Lawrence S. Eagleburger
Gerald R. Ford
Barbara Hackman Franklin
Sam M. Gibbons
Alexander M. Haig, Jr.
Lee H. Hamilton
Carla A. Hills
Juanita M. Kreps
Melvin R. Laird
Robert S. McNamara
Edwin Meese, III
G. William Miller
Leon E. Panetta
William J. Perry
Peter G. Peterson
Donald H. Rumsfeld
Brent Scowcroft
George P. Shultz
William E. Simon
Robert S. Strauss
Clayton Yeutter

Biographical information about each of the amici curiae appears in the Appendix to this brief.

BEST AVAILABLE COPY

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTEREST OF THE AMICI CURIAE 2

SUMMARY OF ARGUMENT 3

ARGUMENT 4

STATE AND LOCAL TRADE SANCTIONS SIGNIFICANTLY IMPEDE THE ABILITY OF THE FEDERAL GOVERNMENT TO CONDUCT THE FOREIGN POLICY OF THE UNITED STATES 4

A. State and Local Trade Sanctions Cause Conflicts with Foreign Nations That U.S. Officials Must Address to the Detriment of Higher Foreign Policy Priorities 6

B. State and Local Trade Sanctions Confuse Foreign Countries About the Foreign Policy of the United States and Detract from the Ability of the United States To Achieve Its Goals and Lead in the International Community 9

C. State and Local Trade Sanctions Interfere with U.S. Foreign Policy Because They Are Adopted Without the Full Range of Information Available to the National Government 14

CONCLUSION 16

APPENDIX: BIOGRAPHICAL INFORMATION ABOUT EACH OF THE AMICI CURIAE 1a

TABLE OF AUTHORITIES

Cases

Page(s)

Board of Trustees v. United States,
289 U.S. 48 (1933) 11

Breard v. Greene,
523 U.S. 371 (1998) 5

Chinese Exclusion Case,
130 U.S. 581 (1889) 11

Chy Lung v. Freeman,
92 U.S. 275 (1876) 7

Hines v. Davidowitz,
312 U.S. 52 (1941) 11

Holmes v. Jennison,
39 U.S. (14 Pet.) 540 (1840) 11

Japan Line, Ltd. v. County of Los Angeles,
441 U.S. 434 (1979) 7

National Foreign Trade Council v. Natsios,
181 F.3d 38 (1st Cir. 1999) 8

United States v. Belmont,
301 U.S. 324 (1937) 11

United States v. Curtiss-Wright Export Corp.,
299 U.S. 304 (1936) 14

TABLE OF AUTHORITIES – Cont'd

United States v. Pink,
315 U.S. 203 (1942) 11

Zschernig v. Miller,
389 U.S. 429 (1968) 5

Other Materials

"A State's Foreign Policy: The Mass that Roared,"
The Economist, Feb. 8, 1997, at 32 8

Ian Brownlie, Principles of Public International
Law (4th ed. 1990) 6

Economic Sanctions and U.S. Policy Interests:
Hearing Before the House Comm. on Int'l
Relations, 105th Cong. (1998) 12

European Commission, Report on United States
Barriers to Trade and Investment § 4.6 (1999) . . . 8

The Federalist No. 42 (James Madison) (Benjamin
Fletcher Wright ed. 1961) 10

The Federalist No. 70 (Alexander Hamilton)
(Benjamin Fletcher Wright ed. 1961) 10

Robert S. Greenberger, "States, Cities Increase Use
of Trade Sanctions, Troubling Business Groups
and U.S. Partners," Wall St. J., Apr. 1, 1998,
at A20 . . . . . 8, 9

TABLE OF AUTHORITIES — Cont'd

Richard N. Haass, Economic Sanctions and American Diplomacy (1998) 12

Robert E. Pierre, "Md. Bill Targeting Nigeria Stirs Ire, State Dept. Opposes Sanctions Proposal," Wash. Post, Mar. 27, 1998, at B1 9

Restatement (Third) of Foreign Relations Law of the United States § 207 (1987) 6, 7

David Schmahmann & James Finch, "The Unconstitutionality of State and Local Enactments in the United States Restricting Ties with Burma (Myanmar)," 30 Vand. J. Transnat'l L. 175 (1997) 14

Peter J. Spiro, Symposium, "Foreign Relations Federalism," 70 U. Colo. L. Rev. 1223 (1999) . . . 7

Testimony of Deputy Assistant Secretary of State David Marchick before the Maryland House of Delegates Committee on Commerce and Government Matters (Mar. 25, 1998) <http://www.usa-engage.org/legislative/marchick.html> . . . 8, 11, 12

United States - Measure Affecting Government Procurement, WT/DS95/3 (Sept. 8, 1998) 8

United States - Measure Affecting Government Procurement, WT/DS88/3 (Sept. 9, 1998) 8

John Yoo, "Federal Courts as Weapons of Foreign Policy: The Case of the Helms-Burton Act," 20 Hastings Int'l & Comp. L. Rev. 747 (1997) . . 11

No. 99-474

In the Supreme Court of the United States

ANDREW S. NATSIOS, SECRETARY OF ADMINISTRATION AND FINANCE OF THE COMMONWEALTH OF MASSACHUSETTS, AND PHILMORE ANDERSON, III, STATE PURCHASING AGENT,

Petitioners,

v.

NATIONAL FOREIGN TRADE COUNCIL,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF FOR GERALD R. FORD, LEE H. HAMILTON, CARLA A. HILLS, AND CERTAIN OTHER FORMER U.S. GOVERNMENT OFFICIALS AS AMICI CURIAE SUPPORTING RESPONDENT

The former senior U.S. government officials listed and described in the Appendix ("Former U.S. Government Officials") respectfully submit this brief as amici curiae supporting the respondent, the National Foreign Trade Council.[1] Because they believe that state action like the Massachusetts Burma Law interferes with the conduct of effective foreign policy by the United States, the Former U.S. Government Officials urge the Court to affirm the First Circuit in this case.

[1] The parties consented to the filing of this brief. Their letters of consent are on file with the Clerk of the Court. Counsel for a party did not write any part of this brief. No one other than the Former U.S. Government Officials and their counsel made a monetary contribution to the preparation or submission of the brief.

INTEREST OF THE AMICI CURIAE

As indicated in the brief biographies in the Appendix to this brief, the Former U.S. Government Officials held high level foreign policy positions in earlier Administrations or Congresses. Those positions include President, Secretary of State, Secretary of Defense, Secretary of the Treasury, Secretary of Commerce, U.S. Trade Representative, National Security Adviser, and Member of Congress with significant foreign relations responsibilities. In those capacities, the Former U.S. Government Officials had the duty to help formulate and implement the foreign, national security, and international trade policies of the United States and represent the United States in its relations with foreign countries and international organizations.

Each of the Former U.S. Government Officials has a significant interest in the way the Court resolves this case. They understand the complexity of conducting effective international relations and the practical realities of and constraints on that task. Based on their experience, they believe that permitting state or local governments to affect U.S. foreign relations by taking actions such as the Massachusetts Burma Law would considerably complicate and harm the ability of federal officials to conduct effective foreign policy. Because they no longer hold official positions with the U.S. government, they have greater latitude to express these views to the Court free from domestic political considerations. Accordingly, for the benefit of current and future U.S. foreign policy, national security, and international trade officials and the conduct of U.S. foreign policy, the Former U.S. Government Officials want to ensure that the Court resolves the issues in this case

with an understanding of the practical considerations underlying their views.[2]

SUMMARY OF ARGUMENT

The Court should affirm the court below because state and local trade sanctions significantly impede the ability of the federal government to conduct the foreign policy of the United States. They cause conflicts and tensions with foreign countries, provoking responses from those countries that, as a matter of international law and as a practical matter, require the attention of the President and federal foreign policy officials. The need for national officials to attend to the disruption caused by state and local action interferes with higher priorities on the U.S. foreign policy agenda.

State and local trade sanctions confuse foreign countries about the foreign policy of the United States by diluting the uniformity and clarity of the nation's position. Confusion about the U.S. policy hampers the ability of national officials to build coalitions with other nations and to bargain with foreign countries effectively, especially in international trade negotiations.

Finally, state and local trade sanctions harm national foreign policy because state officials lack sufficient information to make informed foreign policy judgments. The federal government has access to considerable information about foreign countries and the interests of the entire United States. State and local decisionmakers do not have access to this full range of information, do not have a national perspective, and therefore take actions inconsistent with the carefully balanced national policy.

---

[2] The views expressed by the Former U.S. Government Officials are their own and are not necessarily those of firms, clients, or others related to them.

ARGUMENT

STATE AND LOCAL TRADE SANCTIONS SIGNIFICANTLY IMPEDE THE ABILITY OF THE FEDERAL GOVERNMENT TO CONDUCT THE FOREIGN POLICY OF THE UNITED STATES.

The experiences of the Former U.S. Government Officials in senior foreign policy, national security, and international trade positions of the federal government firmly convince them that allowing state and municipal governments in the United States to adopt trade sanctions aimed at foreign countries ("state and local trade sanctions") would materially interfere with the ability of the national government to conduct effective international negotiations and relations. This view is based on a variety of practical considerations learned during their tenures as U.S. government officials, and the purpose of this submission is to describe those practical considerations for the Court. The purpose of this brief is not to restate the legal arguments, which the parties and other amici curiae will ably present.

Before discussing the practical ways in which state and local action interferes with U.S. international relations, the Former U.S. Government Officials need to make several introductory points to ensure a complete understanding of their position:

First, the Former U.S. Government Officials deplore the human rights record of the current regime in Burma (Myanmar). This case is not about the behavior of that government, however; it is about the proper allocation of authority between the national and state governments for the regulation of international trade and the conduct of the foreign policy of the United States.

Second, the greatest, but by no means the only, concern of the Former U.S. Government Officials is a state or local official act that has the purpose of affecting or has a persistent or substantial effect on the interests or policies of a foreign sovereign. The Massachusetts Burma Law and other state and local trade sanctions are such acts.[3] Their purpose is to create a local foreign policy. As the Petitioners' brief admits, the objective of the Massachusetts Burma Law is to cause economic damage to a foreign government and use that pressure to change the policies and practices of the government. This is the category of state and local actions the Court should address in this case.

The Former U.S. Government Officials do not believe that this case requires a rule that reaches further. They appreciate that, in today's interdependent world, almost any state action, even one of general applicability, can have an incidental or unintended effect on U.S. foreign policy or on the sovereign interests of a foreign country. International relations cover an extremely wide range of activities, from war and peace, to rules of international trade, to treatment of diplomats and the citizens of other countries. Although the occasional state action not intended to affect a foreign country can roil U.S. foreign relations,[4] identifying a workable legal standard to prevent all of those situations would be difficult and is unnecessary here.

Third, the practical concerns the Former U.S. Government Officials have about the risk of interference in U.S. foreign policy from state and local actions arise even when those actions have the same general goal as a federal policy or federal sanctions. To the extent the approach of

---

[3] Thus, Zschernig v. Miller, 389 U.S. 429, 440 (1968), which invalidated an Oregon probate law that "affect[ed] international relations in a persistent and subtle way," governs this case.

[4] See, e.g., Breard v. Greene, 523 U.S. 371 (1998).

states or municipalities differs from a federal approach, even if only as a matter of tactics or emphasis, the problems described below do or can occur. Similarly, the concerns arise even when the Constitution or a federal statute does not explicitly prohibit or preempt the state action.

We now turn to our description of the practical ways in which state and local trade sanctions disrupt the ability of the federal government to conduct an effective foreign policy.

A. State and Local Trade Sanctions Cause Conflicts with Foreign Nations That U.S. Officials Must Address to the Detriment of Higher Foreign Policy Priorities.

State and local trade sanctions and other foreign policy actions cause conflict and tensions with foreign countries. The President and federal foreign policy officials must address these issues to the detriment of higher priorities on the foreign policy agenda.

Sanctions offend the targeted foreign country and, when the trading restrictions apply to the companies of friendly foreign countries, as the Massachusetts Burma Law does, irritate our trading partners. When targeted countries are offended or trading partners are irritated, they direct responses to the national government.

Federal officials must deal with foreign reactions to state and local foreign policy measures because, both as a legal and a practical matter, the federal government and federal officials are accountable to foreign governments for the behavior of state governments. Under international law, a nation with subunits of states or provinces is responsible to other nations for the conduct of the subunits.[5] "The

[5] Restatement (Third) of the Foreign Relations Law of the United States § 207 (1987) ("Third Restatement"); Ian Brownlie, Principles of Public International Law 449 (4th ed. 1990).

United States has consistently accepted international responsibility for actions or omissions of its constituent States and has insisted upon similar responsibility on the part of the national governments of other federal states."[6]

As a practical matter, federal officials also are the ones who must deal with the foreign reactions because the responses of foreign governments nearly always affect the nation as a whole or the relations between senior federal officials and their foreign counterparts. Foreign responses range from diplomatic protests that complicate existing negotiations on other issues, to formal charges that a state's action violated international law or agreements, to retaliatory measures that affect the entire United States and not just the offending state.[7] In extreme cases, the state action could lead to hostilities between the United States and a foreign power.

Efforts to address these responses significantly interfere with the existing U.S. foreign policy agenda. State foreign policy actions exact a high price from the nation in distractions, compromises, and lost opportunities:

> Too often we find ourselves answering criticism about certain state and local actions rather than focussing on the poor behavior of the object of those actions. . . . Measures by states that transgress our international

[6] Third Restatement § 207, Reporters' Note 3 (citing authorities).

[7] See Japan Line, Ltd. v. County of Los Angeles, 441 U.S. 434, 450 (1979) (retaliation of foreign nations "of necessity would be directed at American transportation equipment in general, not just that of the taxing State, so that the Nation as a whole would suffer"); Chy Lung v. Freeman, 92 U.S. 275, 279 (1876) (international claims are made on the United States, not an offending state, and, in the case of war or suspension of relations, the entire United States would suffer); Peter J. Spiro, Symposium, "Foreign Relations Federalism," 70 U. Colo. L. Rev. 1223, 1252 n.130 (1999).

obligations embroil us in disputes that could easily be avoided. Discord with our allies weakens opposition to rogue regimes and trade disputes can impair cooperation that is essential to bringing about meaningful change . . . .[8]

These concerns about foreign reactions to state action are not fanciful. The Massachusetts Burma Law has provoked many foreign protests that national officials have had to manage. For example, Japan, the European Union, and the Association of South East Asian Nations lodged objections with the State Department. Japan and the European Union later filed formal complaints against the United States in the World Trade Organization arguing that the Massachusetts law breaches a WTO agreement on government procurement.[9]

At one point, European officials told senior State Department representatives that they would not cooperate on sanctions against Burma until the Massachusetts situation was resolved.[10] Thus, the Massachusetts law actually

---

[8] Testimony of Deputy Assistant Secretary of State David Marchick before the Maryland House of Delegates Committee on Commerce and Government Matters (Mar. 25, 1998) <http://www.usaengage-.org/legislative/marchick.html>.

[9] See United States - Measure Affecting Government Procurement, WT/DS88/3 (Sept. 9, 1998) (European Union); United States - Measure Affecting Government Procurement, WT/DS95/3 (Sept. 8, 1998) (Japan); European Comm'n, Report on United States Barriers to Trade and Investment § 4.6, at 32 (1999) (noting that the European Union had suspended the proceedings of the WTO panel pending resolution of this case); National Foreign Trade Council v. Natsios, 181 F.3d 38, 54 (1st Cir. 1999); "A State's Foreign Policy: The Mass that Roared," The Economist, Feb. 8, 1997, at 32.

[10] Robert S. Greenberger, "States, Cities Increase Use of Trade Sanctions, Troubling Business Groups and U.S. Partners," Wall St. J., Apr. 1, 1998, at A20.

impaired the effectiveness of U.S. policy on Burma's human rights violations.

Relying on the national legislative process to address and preempt state or local foreign policy actions that threaten to interfere with U.S. international relations is not a solution. Senior foreign policy officials in the Executive Branch and Congress do not have the time or resources to monitor state and local initiatives, anticipate those that could disrupt U.S. foreign relations, and then, in each case, upset complex national legislative priorities to enact pre-emptive federal statutes. In addition, article I, section 10, clause 3 of the Constitution indicates a preference for Congress to act in advance to authorize a state activity in the foreign affairs area rather than for congressional action that prohibits or preempts state activity that already occurred.

B. State and Local Trade Sanctions Confuse Foreign Countries About the Foreign Policy of the United States and Detract from the Ability of the United States To Achieve Its Goals and Lead in the International Community.

State and local trade sanctions and similar international policy efforts also impede U.S. foreign relations by confusing foreign countries about the position of the United States. Thus, they detract from the ability of the United States to achieve its goals and to lead in the international community.

State foreign policy actions such as trade sanctions dilute the uniformity and clarity of the nation's stance.[11]

---

[11] See, e.g., Greenberger, supra note 10 (quoting a European Union trade official complaint that state and local sanctions send "conflicting signals about who determines U.S. foreign policy"); Robert E. Pierre, "Md. Bill Targeting Nigeria Stirs Ire, State Dept. Opposes Sanctions Proposal," Wash. Post, Mar. 27, 1998, at B1 (U.S. officials said that "state

They raise doubts and confusion in the minds of foreign policymakers about the U.S. position, its commitment to a particular course, and the stability of its policy. They can lead to miscalculations, possibly dangerous miscalculations, by foreign governments. They also create uncertainty about whether the U.S. officials represent all or only part of the United States.

The purpose of centralizing foreign affairs powers in the national government and particularly in the Executive Branch was in part to avoid these problems of confusion and dilution. Alexander Hamilton, when explaining the need for a single executive under the proposed Constitution, cogently identified the practical difficulties that would occur if more than one person had significant authority in areas of national concern:

> Wherever two or more persons are engaged in any common enterprise or pursuit, there is always danger of difference of opinion. ... Whenever [bitter dissensions] happen, they lessen the respectability, weaken the authority, and distract the plans and operations of those whom they divide. If they should [occur in the executive of a country], they might impede or frustrate the most important measures of the government, in the most critical emergencies of the state.[12]

Specifically in the foreign affairs arena, both this Court and academic theorists have confirmed what Hamilton viewed as the "dictates of reason and good sense."[13] The

---

sanctions would leave the United States sending mixed messages to foreign countries").

[12] The Federalist No. 70, at 453 (Alexander Hamilton) (Benjamin Fletcher Wright ed. 1961).

[13] Id.; see also The Federalist No. 42, at 302 (James Madison) (Benjamin Fletcher Wright ed. 1961).

Court has long recognized that "[p]ower over external affairs is not shared by the States; it is vested in the national government exclusively."[14] Scholars have studied the institutional characteristics necessary for the successful execution of foreign policy and agree that a single, unitary decision maker is most effective.[15] Expanding the role of states and localities in international relations would be antithetical to this structure and to Hamilton's vision of an effective national executive.

Experience also confirms that, in several different ways, the potential for confusion or lack of clarity in the U.S. position and message impairs the ability of federal officials to achieve their foreign policy goals. For example, it reduces the willingness of foreign nations to align with the United States: "[S]tate sanctions often can confuse the message the United States sends and impede our ability to build coalitions to focus on the targeted regime."[16] As

---

[14] United States v. Pink, 315 U.S. 203, 233 (1942); see also Hines v. Davidowitz, 312 U.S. 52, 63 (1941) (the federal government "is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties," and "federal power in the field affecting foreign relations [must] be left entirely free from local interference") (emphasis added); United States v. Belmont, 301 U.S. 324, 331 (1937) (in "respect of our foreign relations generally, state lines disappear"); Board of Trustees v. United States, 289 U.S. 48, 59 (1933) ("In international relations and with respect to foreign intercourse and trade the people of the United States act through a single government with unified and adequate national power") (emphasis added); Chinese Exclusion Case, 130 U.S. 581, 606 (1889); Holmes v. Jennison, 39 U.S. (14 Pet.) 540, 575-76 (1840) ("It was one of the main objects of the [C]onstitution to make us, so far as regarded our foreign relations, one people, and one nation").

[15] See John Yoo, "Federal Courts as Weapons of Foreign Policy: The Case of the Helms-Burton Act," 20 Hastings Int'l & Comp. L. Rev. 747, 769-71 (1997) (discussing Thomas Schelling, The Strategy of Conflict (1960); Graham Allison, Essence of Decision: Explaining the Cuban Missile Crisis (1971)).

[16] Marchick, supra note 8 ("state and local sanctions may impair the

mentioned above, the Massachusetts Burma Law had exactly this effect on U.S. efforts to persuade European officials to cooperate on sanctions against Burma.

Thus, the possibility of mixed messages and differing positions is especially harmful when the United States considers the use of international trade sanctions to accomplish a foreign policy goal. The clear lesson of the last fifty years is that many countries must impose the same trade restrictions to have a realistic chance of altering the behavior of a rogue regime.[17] When trade sanctions are not multilateral, the targeted foreign country can obtain supplies or markets in other countries, and the sanctions end up hurting only the restricted U.S. businesses. Policymakers are increasingly skeptical of the effectiveness of trade sanctions imposed by the United States alone much less the far more limited ones a state or local government can adopt. Only the federal government has the foreign relations capability of seeking and obtaining the agreement of other countries to multilateral sanctions. As a result, state and local sanctions are not only ineffectual but, because they confuse the U.S. position, they also hinder the efforts of national officials to build the coalitions necessary for effective embargoes.

A further way that state sanctions or any potential departure from the federal position dissipates the effectiveness of the United States is by weakening the bargaining power of the United States during negotiations, especially international trade negotiations. The possibility

---

President's ability to send a clear and unified message to the rest of the world").

17 See Richard N. Haass, Economic Sanctions & American Diplomacy 200-01, 206-07 (1998); Economic Sanctions and U.S. Policy Interests: Hearing Before the House Comm. on Int'l Relations, 105th Cong. 10 (1998) (statement of Stuart Eizenstat, Undersecretary for Economics, Business and Agricultural Affairs, State Dep't); Marchick, supra note 8.

of inconsistent state and local actions creates questions about the ability of the federal representatives to commit the United States as a single market. U.S. negotiators would not receive the other side's best offer if the foreign state needed to reserve potential additional concessions for discussions with officials of U.S. states and localities. Centralizing authority over U.S. foreign policy at the national level enhances our influence and the weight of our international role.

The Former U.S. Government Officials acknowledge that achieving uniformity and consistency within the national government of the United States on matters of foreign policy is an ideal that is not always achieved. The President is not always able to ensure harmony among all senior Executive Branch officials, much less all Members of Congress. To some extent, the same problems of confusion and dilution occur within the federal government itself. Nonetheless, that problem differs in several ways from the problems state foreign policy efforts cause. First, the President exercises control over the Executive Branch, but the states do not control the actions of other states. Second, foreign countries generally understand and accept that the United States, as well as some other nations, have systems of government with different branches at the national level that play a role in determining foreign policy. Foreign officials have more difficulty understanding and accepting that subnational units are able to play an independent role in international affairs. Third, state and local action in the international field would immeasurably compound the problem because of the large number of state and local governments that might wish to take some action, and possibly differing actions, in any particular case.

C. State and Local Trade Sanctions Interfere with U.S. Foreign Policy Because They Are Adopted Without the Full Range of Information Available to the National Government.

State and local trade sanctions interfere with national foreign policy because state officials lack sufficient information to make informed judgments about the appropriate policy. Making effective judgments about relations with other countries is a complex and delicate task requiring a broad array of information on many security, political, economic, and social issues in many different countries. Justice Sutherland in *Curtiss-Wright* referred to the "vast external realm, with its important, complicated, delicate and manifold problems."[18] The federal government has a large foreign policy and intelligence-gathering apparatus, including the Departments of State, Defense, Commerce, and Energy, the Office of the U.S. Trade Representative, the National Security Agency, and the Central Intelligence Agency, to provide the information.

Settling on a foreign policy position also requires taking into account the interests of the entire United States. It requires consultation with congressional committees and leadership and the evaluation of competing interests within the United States.

State and local decisionmakers do not have access to this full range of information and necessarily make foreign policy judgments that are less than fully informed. They also lack a national perspective and naturally pursue their own local interests at the expense of other states and the nation.[19] As a result, states and localities take actions in the

---

[18] United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 319 (1936).

[19] David Schmahmann & James Finch, "The Unconstitutionality of State and Local Enactments in the United States Restricting Business Ties with Burma (Myanmar)," 30 Vand. J. Transnat'l L. 175, 205 (1997) ("Local actions may be intemperate and not informed by larger, national policy issues.").

foreign policy field that are different from and inconsistent with those preferred by federal officials. Only the federal government is equipped and informed to choose policies in the interests of the nation as a whole.

CONCLUSION

For all of these reasons, the Former U.S. Government Officials believe that state and local trade sanctions and similar international ventures materially harm the conduct of U.S. foreign relations. The United States could find no surer way of dividing and diminishing its effectiveness and influence in world affairs than by authorizing each state and local government to decide for itself the terms on which it will conduct relations with foreign countries. The Former U.S. Government Officials therefore request that the Court affirm the Court of Appeals for the First Circuit and hold the Massachusetts Burma Law unconstitutional.

Respectfully submitted,

ANDREW N. VOLLMER
CAROL J. BANTA
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037
202-663-6000

MARTIN S. KAUFMAN
Counsel of Record
EDWIN L. LEWIS, III
ATLANTIC LEGAL FOUNDATION
205 East 42d Street
New York, New York 10017
212-573-1960

February 2000

Counsel for Amici Curiae

APPENDIX

APPENDIX

BIOGRAPHICAL INFORMATION ABOUT EACH OF THE AMICI CURIAE

James A. Baker, III served as Secretary of State from 1989-1992. Before that, he was Secretary of the Treasury from 1985-1988 and Undersecretary of Commerce from 1975-1976. He also served as chief of staff to President Reagan (1981-1985) and President Bush (1992-1993). He is the recipient of the Presidential Medal of Freedom (1991), the Woodrow Wilson Award, and many other awards for his distinguished public service.

Griffin B. Bell was Attorney General of the United States from 1977 to 1979 and a judge of the United States Court of Appeals for the Fifth Circuit from 1961 to 1976. He was also Chairman of the Madrid Conference on Security and Cooperation in Europe (1980).

Nicholas F. Brady served as Secretary of the Treasury from 1988 to 1993. He was also United States Senator from New Jersey.

William E. Brock was Secretary of Labor from 1985 to 1987 and U.S. Trade Representative from 1981 to 1985. He served as United States Senator from Tennessee (1971-1977) and a Member of the House of Representatives (1963-1970).

Frank C. Carlucci served as Secretary of Defense from 1987 to 1989. He also served as National Security Advisor (1987), Deputy Secretary of Defense (1981-1982), Deputy Director of Central Intelligence (1978-1981), Ambassador to Portugal (1975-1978), Undersecretary of the Department

of Health, Education and Welfare (1972-1974), and Deputy Director and Associate Director of the Office of Management and Budget (1971-1972). He served as a Foreign Service Officer in various posts from 1956-1978. He is the recipient of numerous awards for distinguished service in the defense and intelligence services of the United States.

Richard B. Cheney was Secretary of Defense from 1989 to 1993. Before that, he served six terms as a member of the House of Representatives from Wyoming.

Frederick B. Dent served as Secretary of Commerce from 1973 to 1975. He was Ambassador and Special Representative for Trade Negotiations from 1975 to 1977.

Lawrence S. Eagleburger was Secretary of State from 1992 to 1993. He served as Deputy Secretary of State from 1989 to 1992 and as Under Secretary of State for Political Affairs from 1982 to 1984. From 1973 to 1975 he was Deputy National Security Advisor. He also served in numerous diplomatic posts, including Ambassador to Yugoslavia from 1977 to 1981.

Gerald R. Ford was the thirty-eighth President of the United States. He also served as Vice President of the United States. He was a Member of Congress for 26 years (1949-1974), serving as Minority Leader of the House of Representatives for 10 years (1965-1974).

Barbara Hackman Franklin served as Secretary of Commerce from 1992 to 1993. She also served as Vice Chair of the Consumer Products Safety Commission from 1973 to 1979.

Sam M. Gibbons served as a member of the United States House of Representatives from Florida for 34 years, from 1962 to 1996. He was Chairman of the House Ways and Means Committee and its Subcommittee on Trade. He

was also U.S. Advisor to the General Agreement on Tariffs and Trade and the World Trade Organization. Congressman Gibbons was a primary advocate and sponsor of every major international trade law enacted during his tenure in Congress. He led numerous interparliamentary delegations throughout Europe, Latin America, the Middle East and Asia on issues of trade and economics.

Alexander M. Haig, Jr. served as Secretary of State from 1981 to 1982. He was Chief of Staff in the White House from 1973 to 1974. His distinguished military career included service as Supreme Allied Commander Europe (1974-1979) and vice chief of staff of the United States Army (1973). He is the recipient of numerous awards and commendations.

Lee H. Hamilton was a Member of the House of Representatives from 1965 to 1999. He served as Chairman of the House Foreign Affairs Committee and the House Intelligence Committee, was a member of the Joint Economics Committee, and was ranking minority member of the House Committee on International Relations. He is director of the Woodrow Wilson Center for International Scholars.

Carla A. Hills served as United States Trade Representative from 1989 to 1993. She served as Secretary of the Department of Housing and Urban Development from 1975 to 1977 and as Assistant Attorney General in charge of the Civil Division, United States Department of Justice from 1974 to 1975. She is the co-author of treatises on federal civil practice and antitrust law.

Juanita M. Kreps was Secretary of Commerce from 1977 to 1979. She is James Duke Professor Emeritus of Economics at Duke University, the author of a treatise on economics, and author, co-author, or editor of numerous monographs on various aspects of economics.

Melvin R. Laird was Secretary of Defense from 1969 to 1973. He was also counsellor to the President from 1973 to 1974. He was a member of the House of Representatives from Wisconsin for 16 years and a member of the Wisconsin State Senate for six years. He is the author of a treatise on American strategic policy. He is recipient of numerous awards, including the French Legion of Honor and the Albert Lasker medical award. He was awarded the Presidential Medal of Freedom in 1974.

Robert S. McNamara was Secretary of Defense from 1961 to 1968 and President of the World Bank from 1968 to 1981. Before entering public service, he was president of Ford Motor Company. He is the author of a book on international security issues and another on international economic development.

Edwin Meese, III was Attorney General of the United States from 1985 to 1988. He was counsellor to the President from 1981 to 1985. From 1969 to 1975, he was chief of staff for the Governor of California.

G. William Miller was Secretary of the Treasury from August 1979 to January 1981 and previously was Chairman of the Board of Governors of the Federal Reserve System from March 1978 to August 1979. Before his government service, he was Chairman and Chief Executive Officer of Textron Inc.

Leon E. Panetta served as White House chief of staff from 1994 to 1997 and as director of the Office of Management and Budget from 1993 to 1994. He was a member of the House of Representatives from 1977 to 1993, serving as Chairman of the House Budget Committee.

William J. Perry was Secretary of Defense from 1994 to 1997, Deputy Secretary of Defense from 1993 to 1994,

and Under Secretary of Defense for Research and Engineering from 1977 to 1981. He is a professor of engineering, economic systems, and operations research at Stanford University and was the co-director of the Stanford University Center for International Security and Arms Control from 1989 to 1993. He is the recipient of numerous awards for public service, including, in 1997, the Presidential Medal of Freedom.

Peter G. Peterson served as Assistant to the President for International Economic Affairs from 1971 to 1972 and Secretary of Commerce from 1972 to 1973. He is currently Chairman of the Board of the Federal Reserve Bank of New York, Chairman of the Council on Foreign Relations, and Chairman of the Institute for International Economics. He has been the CEO of a major industrial company and a major investment bank. He is the author of several works on economics and public policy.

Donald H. Rumsfeld served as Secretary of Defense from 1975 to 1977, as White House Chief of Staff from 1974-1975, as U.S. Ambassador to NATO from 1973 to 1974, as counsellor to the President and director of the economic stabilization program from 1971 to 1972, and as Director of the Office of Equal Opportunity from 1969 to 1970. He served as the President's Special Envoy to the Middle East from 1983 to 1984. He was a member of the House of Representatives from Illinois for eight years. He received the Presidential Medal of Freedom in 1977 and has also been awarded numerous other honors for his public service in the fields of defense and foreign policy.

Brent Scowcroft was National Security Advisor to the President from 1975 to 1977 and from 1989 to 1993 and served in numerous field and senior staff positions in the United States Department of Defense. He also served as a military attaché, taught political science at the Air Force

Academy, and taught at the National War College. He retired as a lieutenant general in the United States Air Force. He received numerous military honors and was awarded the Presidential Medal of Freedom in 1991.

George P. Shultz was Secretary of State from 1982 to 1989. From 1969 to 1970, he served as Secretary of Labor; from 1970 to 1972, he was Director of the Office of Management and Budget, and from 1972 to 1974 he was Secretary of the Treasury. He has also served as Chairman of the President's Council on Economic Policy, negotiated a series of trade protocols with the former Soviet Union and was the chief U.S. representative at the Tokyo Round of negotiations on the General Agreement on Tariffs and Trade. He is currently Distinguished Fellow at the Hoover Institution at Stanford University. He is the author of several books on diplomacy, economic policy, labor policy, labor markets and labor economics, and business management. He was awarded the Presidential Medal of Freedom in 1989.

William E. Simon served as Secretary of the Treasury from 1974 to 1977, Deputy Secretary of the Treasury from 1972 to 1974, and simultaneously as Director of the Federal Energy Office (predecessor of the Department of Energy) from 1973 to 1974. He also served as Chairman of the President's Economic Policy Board and Chairman of the U.S.-Saudi and U.S.-Israel Commissions on Economic Development. He also served as the U.S. governor of the International Monetary Fund and the World Bank.

Robert S. Strauss was U.S. Ambassador to the Soviet Union and Russia from 1991 to 1992. He served as Special Trade Representative from 1977 to 1979 in connection with the Tokyo Round of Multilateral Trade Negotiations. In 1979, he represented President Carter in the Middle East

Peace Negotiations. In 1981, he received the Presidential Medal of Freedom.

Clayton Yeutter served as United States Trade Representative from 1985-1988, Secretary of Agriculture from 1989-1991, and Counselor to the President in 1992. He also served as Assistant Secretary of Agriculture for International Affairs and Commodity Programs and as Deputy Special Trade Representative in the 1970s.